

Message Text

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ACTION STR-04

INFO OCT-01 STRE-00 ISO-00 IO-13 OIC-02 AF-10 ARA-10
EA-07 EUR-12 NEA-10 FEA-01 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
/140 W

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P R 071800Z JUN 77

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 8041

INFO AMEMBASSY BRUSSELS

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

LIMITED OFFICIAL USE SECTION 1 OF 3 GENEVA 4550

USMTN

BRUSSELS FOR USEEC

ACTION STR FOR MATTHEISEN

E.O. 11652: N/A

TAGS: ETRD, GATT, MTN

SUBJ: INITIAL INPUT FOR MEETING OF GROUP SAFEGUARDS,
JUNE 27-29, 1977

REFS: A) GENEVA 4490 (NOTAL); B) MTN GENEVA 3529,
C) MTN GENEVA 2263 (NOTAL)

1. U.S. OBJECTIVE SHOULD BE TO COMPLETE DISCUSSION OF MAJOR
SAFEGUARDS ISSUE GROUPINGS, AS BASIS FOR SUBSEQUENT DRAFTING
OF SINGLE NEGOTIATING DOCUMENT. ACCORDINGLY, U.S. SHOULD
BE PREPARED TO ADDRESS FOLLOWING ITEMS AT THIS MEETING:

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(A) DOMESTIC PROCEDURES (WE WILL NEED TO REINTRODUCE
U.S. PAPER, REBUT STANDARD OBJECTIONS, AND POSSIBLY DEAL
WITH EC-CANADIAN-JAPANESE SECTION 337 PREOCCUPATION AND
JAPANESE "MULTIPLE JEOPARDY" COMPLAINTS AS WELL);

(B) SHORT-TERM SEASONAL/CYCLICAL PROBLEMS (CANADIANS

CIRCULATING EXCERPTS OF TARIFF BOARD RECOMMENDATIONS
ON SURTAX MECHANISMS);

(C) NOTIFICATION/CONSULTATION/SURVEILLANCE/DISPUTE
SETTLEMENT (WE SHOULD GIVE MORE DETAIL ON U.S. APPROACH--
IF POSSIBLE BY TABLING A PAPER PRIOR TO MEETING--ESPECIALLY
IN LIGHT OF LAST MEETING'S DEBATE ON RETALIATION/
COMPENSATION);

(D) UNDER BOTH (B) AND (C), QUESTION OF "AUTOMATIC"
(SURVEILLANCE) LICENSING (FOLLOWING UP RECENT TECHNICAL
LEVEL QR SUBGROUP DISCUSSION OF LICENSING TEXTS);

(E) POSSIBLY, QUESTION OF "PROVISIONAL ACTION" IN
SAFEGUARDS SYSTEM (I.E., THE CRITICAL CIRCUMSTANCES"
ISSUE--U.S. HAS NOT REALLY GRAPPLED WITH THIS YET, BUT
IT IS ONE KEY ASPECT OF FIRST THREE ITEMS ABOVE);

(F) TWO OTHER POINTS FROM LAST MEETING--(I) JAPANESE
INJURY FACTOR CHECKLIST (DO WE HAVE COMMENTS?) AND (II)
SELECTIVITY ISSUE (JAPAN-U.S. OMA ON COLOR TV'S AND
PENDING KOREA-U.S., TAIWAN-U.S. OMA'S ON FOOTWEAR LIKELY
TO PROVOKE FURTHER PROBING OF U.S. POSITION BY OTHER DELS);
AND

(G) FUTURE WORK OF SAFEGUARDS GROUP (SG)--MTN DEL
BELIEVES NEXT SG MEETING IN FALL SHOULD BE DEFERRED
UNTIL U.S. CAN PREPARE, DISCUSS WITH KEY COUNTRIES, AND
TABLE A DRAFT SAFEGUARDS CODE AS BASIS FOR FURTHER
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NEGOTIATIONS.

2. DOMESTIC PROCEDURES. BULK OF U.S. CASE IS MADE IN
OUR SUPPLEMENTARY PROPOSAL (MTN/SG/W/28) AND INTRODUCTORY
STATEMENT (W/33). OTHER DELS BY NOW MAY HAVE DEVELOPED
CAREFULLY FORMULATED OBJECTIONS AND WE WILL NEED PERSUASIVE
REBUTTAL ARGUMENTS; AT MINIMUM, MTN DEL RECOMMENDS THAT
DRAFT REBUTTAL STATEMENT, PREPARED IN DEL FOR LAST MEETING
BUT NOT USED, BE INCORPORATED IN APPROVED GUIDANCE FOR
THIS MEETING. WE WILL ALSO NEED APPROPRIATE COMMENTS FOR
DEALING WITH POSSIBILITY OF RENEWED COMPLAINTS (CANADA-
EC-JAPAN) ON TARIFF ACT SECTION 337 AND ITS RELATIONSHIP
(IF ANY) TO SAFEGUARDS WORK, AS WELL AS WITH JAPANESE
COMPLAINT THAT U.S. MAINTAINS "MULTIPLE JEOPARDY" DOMESTIC
PROCEDURES WHICH FACILITATE COSTLY ASSESSMENT OF FOREIGN
EXPORTERS.

3. SHORT-TERM SEASONAL/CYCLICAL PROBLEMS. CANADIAN MTN
DEL IS CIRCULATING RELEVANT SECTIONS OF CANADIAN TARIFF

BOARD REPORT ON FRUITS AND VEGETABLES (MTN GENEVA 4143)
FOR CONSIDERATION BY SG UNDER TOPIC OF SHORT-TERM SEASONAL
AND CYCLICAL PROBLEMS. IN VIEW OF UNOFFICIAL CHARACTER
OF BOARD'S RECOMMENDATIONS, HOWEVER, CANADIANS NOT LIKELY
TO ELABORATE SUBSTANTIVELY THEREON IN SG PENDING POLICY
DECISIONS IN OTTAWA. CANADA HAS BEEN VIRTUALLY ALONE
KEEPING THIS ISSUE BEFORE SG, SO IT CAN BE ASSUMED NO
OTHER PAPERS WILL BE TABLED ON IT, AND DISCUSSION
MAY BE RATHER LISTLESS. SINCE TO OUR KNOWLEDGE THE U.S.

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ACTION STR-04

INFO OCT-01 STRE-00 ISO-00 IO-13 AF-10 ARA-10 EA-07
EUR-12 NEA-10 OIC-02 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-07 FRB-03 H-01 INR-07
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TO SECSTATE WASHDC PRIORITY 8042

INFO AMEMBASSY BRUSSELS

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

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BRUSSELS FOR USEEC

ACTION STR FOR MATTHEISEN

HAS NOT YET MADE REPRESENTATIONS IN OTTAWA ON THE SURTAX
PROPOSAL, WE WOULD NOT PLAN TO COMMENT ON IT IN SG MEETING.
AT SOME APPROPRIATE POINT, HOWEVER, U.S. VIEWS ON THE
SURTAX PROPOSAL SHOULD BE AIRED HERE IN VIEW OF (A) AWKWARD,
POSSIBLY UNWORKABLE, AND APPARENTLY GATT-INCONSISTENT
NATURE OF THESE RECOMMENDATIONS--AN ASSESSMENT PRIVATELY
SHARED BY SOME IN CANADIAN DEL; AND (B) TROUBLING
IMPLICATIONS OF SURTAX MECHANISM FOR U.S. TRADE INTERESTS

IN ANY BILATERAL SAFEGUARD ARRANGEMENT CANADIANS MAY
EVENTUALLY PROPOSE. EVEN THOUGH CANADIANS MAY ATTEMPT
TO DRAW A CERTAIN DISTINCTION BETWEEN TARIFF BOARD
RECOMMENDATIONS AND GOC NEGOTIATING OBJECTIVES ON SAFE-
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GUARDS, THE MERE ACT OF TABLING PROPOSED SCHEME OF
"AUTOMATIC" SURTAXES COULD SUGGEST A CANADIAN MOVE AWAY
FROM CASE-BY-CASE EVALUATION OF "SERIOUS INJURY" (AS
PRESENTLY REQUIRED BY ARTICLE XIX AND OBSERVED BY CANADA).
CANADIAN PAPER MAY ALSO PROVOKE DISCUSSION OF MIP/MEP
APPROACH TO SAFEGUARD ACTION, IN WHICH U.S. WILL NEED TO
PRESERVE ANY POSITIONS AT ISSUE IN CURRENT GATT PANEL
REVIEW OF EC MIP'S.

4. NOTIFICATION/CONSULTATION/SURVEILLANCE/DISPUTE SETTLE-
MENT. MTN DEL UNDERSTANDING AS OF THREE WEEKS AGO WAS
THAT U.S. PAPER ON THIS SUBJECT IN PREPARATION FOR TABLING
PRIOR TO JUNE SG MEETING. WE WILL NEED SUCH PAPER BY
EARLY NEXT WEEK AT LATEST TO PERMIT TRANSLATION AND
CIRCULATION SUFFICIENTLY IN ADVANCE OF MEETING, BUT IN
ANY CASE WE BELIEVE AT MEETING ITSELF U.S. OUGHT TO PRE-
SENT MORE DETAILED EXPOSITION OF ITS PROPOSALS. CANADIAN
DEL ADVISES US IT EXPECTS TO HAVE "FAIRLY DETAILED"
STATEMENT ON THIS SUBJECT, EXPANDING ON ITS STATEMENT OF
LAST OCTOBER (SG/W/17). U.S. PRESENTATION SHOULD THERE-
FORE SPECIFICALLY ADDRESS DOUBTS RAISED BY CANADIANS ON
U.S. "MONITORING COMMITTEE" APPROACH. IN THIS "DISPUTE
MANAGEMENT" CONTEXT, WE SHOULD ALSO DEAL WITH SEVERAL
CONCERNS RAISED BY OTHER DELS AT LAST SG MEETING UNDER
RETALIATION/COMPENSATION HEADING. OBJECT WOULD BE TO
HELP ALLAY SOME FEARS EXPRESSED BY OTHERS AS TO U.S.
INTENTIONS, AND EXPLANATIONS SHOULD BE SPECIFICALLY
GEARED TO THE PRINCIPLE OF LIMITING RETALIATION TO CASES
IN WHICH SUFFICIENT JUSTIFICATION OR CONFORMITY TO
INTERNATIONALLY-REQUIRED CONDITIONS AND PROCEDURES
IS LACKING. U.S. SHOULD ALSO BE IN POSITION TO GIVE
CONCRETE EXAMPLES OF HOW RETALIATION AND/OR COMPENSATION
CASES WOULD PROCEED TOWARD RESOLUTION IN CONTEXT OF A
MULTILATERAL MONITORING COMMITTEE. IT IS NOW QUITE
CLEAR THAT SG CANNOT GET PAST THE "RETALIATION" FIXATION
OF SOME DELS UNLESS U.S. (AND, HOPEFULLY, OTHERS) CAN
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CONVINCINGLY ARGUE THE MERITS OF IMPROVED SURVEILLANCE
AND DISPUTE-SETTLEMENT PROCEDURES.

5. AUTOMATIC LICENSING. AS RECOMMENDED PREVIOUSLY (REF C), U.S. OUGHT TO CONTINUE EFFORT BEGUN IN QR SUBGROUP TO HAVE SG REVIEW THIS QUESTION. RELEVANCE TO SURVEILLANCE TOPIC IS CLEAR, AND WE MAY WISH TO MAKE A LINK WITH THE SHORT-TERM SEASONAL/CYCLICAL ITEM AS WELL. MINIMUM WOULD BE SOME FOLLOW-UP COMMENTS ON MAY 24-25 TECHNICAL LEVEL LICENSING MEETING (MTN GENEVA 4270), IN WHICH CONSIDERABLE DISCUSSION DEVOTED TO SAFEGUARD AND "PRE-SAFE-GUARD" ASPECTS OF AUTOMATIC LICENSING SYSTEMS. IN THIS DISCUSSION NORDICS, JAPAN, AUSTRIA AND MEXICO ACKNOWLEDGED RELATIONSHIP BETWEEN SAFEGUARDS AND AUTOMATIC IMPORT LICENSING--AUSTRALIA WENT FURTHER, INSISTING THAT ONLY JUSTIFICATION FOR AUTOMATIC LICENSING WAS TO MONITOR IMPORTS IN PRE-SAFEGUARDS SITUATION. U.S. WAS UNSUCCESSFUL, HOWEVER, IN ACHIEVING TECHNICAL GROUP CONSENSUS TO REFER ISSUE TO SG FOR CONSIDERATION. NEXT LOGICAL MOVE WOULD BE U.S. SUGGESTION IN SG MEETING THAT, IN VIEW OF IMPORTANT SURVEILLANCE ROLE PLAYED BY AUTOMATIC IMPORT-LICENSING SYSTEMS, SG MEMBERS OUGHT TO CONSIDER AUTOMATIC LICENSING TEXT (MTN/NTM/W/98).

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INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 STRE-00 FEA-01
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 EB-07
FRB-03 H-01 INR-07 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-01 EPG-02 AID-05 SS-15 ITC-01 TRSE-00
USIA-06 PRS-01 SP-02 OMB-01 OIC-02 AF-10 ARA-10
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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 8043
INFO AMEMBASSY BRUSSELS
AMEMBASSY OTTAWA
AMEMBASSY TOKYO

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USMTN

BRUSSELS FOR USEEC

ACTION STR FOR MATTHEISEN

6. "PROVISIONAL ACTION." WE FLAG THIS FOR WASHINGTON CONSIDERATION AS ITEM WHICH COULD COME UP UNDER SEVERAL TOPICS DISCUSSED ABOVE AND ON WHICH U.S. SHOULD BEGIN TO REFINE ITS THINKING IN SPECIFIC CONTEXT OF OUR APPROACH TO DOMESTIC PROCEDURES, NOTIFICATION, CONSULTATION, AND RETALIATION/COMPENSATION. STARTING POINT WOULD BE FACT THAT MANY INVOCATIONS OF ARTICLE XIX INVOLVE NO PRIOR NOTIFICATION/CONSULTATION, AND THUS IMPLICITLY COME UNDER "CRITICAL CIRCUMSTANCES" EXCEPTION OF XIX:2. SINCE U.S. PROPOSES GENERALLY TO CONTINUE THAT EXCEPTION UNDER AN IMPROVED SYSTEM, WE SHOULD, LOGICALLY, PROPOSE A SPECIFIC SET OF GUIDELINES ON USE OF THE CRITICAL LIMITED OFFICIAL USE

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CIRCUMSTANCES COVER IN ANY BROADER GUIDELINE ON USE OF XIX AS A WHOLE. (WHILE PARTICULARS OF SUCH PROPOSAL WOULD COME AT LATER STAGE (PRESUMABLY WHEN WE TABLE A DRAFT CODE), ONE APPROACH MIGHT BE TO TREAT ALL 'CRITICAL CIRCUMSTANCES' CASES AS DE FACTO PROVISIONAL--SUBJECT TO AUTOMATIC PHASEOUT, SOME SPECIAL SYSTEM OF JUSTIFICATION, AND A PRESUMPTION OF COMPENSATION UNLESS CODE REQUIREMENTS COMPLIED WITH EXPEDITIOUSLY.) WHATEVER THE EVENTUAL U.S. APPROACH, WE MAY EVEN NOW WISH TO INDICATE THAT FUTURE INVOCATION OF CRITICAL CIRCUMSTANCES--WHETHER EXPLICIT OR IMPLICIT--OUGHT TO BE SUBJECT TO TIGHTER RULES, AND THAT A CODE WILL NEED TO ADDRESS THE WHOLE QUESTION OF PROVISIONAL ACTION MORE GENERALLY. (THIS WOULD PICK UP BOTH CANADIAN HORTICULTURAL ACTIONS, AND SOME OTHER ODDITIES NOW BEING TAKEN 'OUTSIDE THE SYSTEM'.)

7. RESIDUAL AGENDA ITEMS. JAPANESE INJURY FACTOR CHECKLIST MAY COME UP FOR A REHEARING SINCE IT WAS INTRODUCED ONLY DURING LAST SG MEETING. WE SEE NO NEED TO MAKE NEW COMMENTS, BUT WE MAY WISH TO REITERATE SOME PREVIOUS ONES. MORE TROUBLESOME WILL BE HOW WE HANDLE NEW OR RECYCLED QUESTIONS ON U.S. APPROACH TO SELECTIVITY UNDER CURRENT ARTICLE XIX AND UNDER AN IMPROVED SYSTEM, IN VIEW OF COLOR TV'S OMA (YET TO BE NOTIFIED TO GATT) AND PENDING FOOTWEAR OMA'S. IN MTN DEL VIEW, EXPLORATION IN UPCOMING KEY-COUNTRY MTN BILATERALS OF LEGITIMATE BUT CAREFULLY CONTROLLED ROLE FOR OMA'S IN FUTURE SYSTEM (WITH U.S. SUPPLIED FEATURES OF PUBLICITY, TRANSPARENCY, ETC.) WILL BE ESSENTIAL PRE-CONDITION TO SUCCESSFUL OUTCOME FOR MTN SAFEGUARD NEGOTIATIONS. IN MEANTIME, HOWEVER, WE NEED A CREDIBLE WASHINGTON-APPROVED

INTERIM POSITION ON SELECTIVITY FOR NEXT SG MEETING;
IT IS BECOMING INCREASINGLY DIFFICULT TO IMPROVISE
AT THIS END ON MATTER OF SUCH SENSITIVITY TO OTHER DELS.
A NEW U.S. STATEMENT IN SG ON VRA'S (WHICH WE UNDER-
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STAND WASHINGTON IS CONSIDERING) MAY HELP TO HOLD OFF
OTHER DELS--BUT MAY ALSO PROVOKE NEW ROUND OF QUESTIONS.

8. FUTURE WORK. WE URGE CONSIDERATION BY WASHINGTON
AGENCIES OF MOST DESIRABLE NEXT STEPS IN SAFEGUARDS GROUP.
ONE THEORETICAL POSSIBILITY IS TO REQUEST GATT SECRETARIAT
TO PREPARE COLLATION OF DELEGATION VIEWS EXPRESSED TO DATE,
WITH PRINCIPAL DRAWBACK BEING THAT IN VIEW OF HISTORY OF
CAUTIOUSNESS OF OTHERS, THERE WOULD BE INORDINATE AMOUNT
OF NEGOTIATION BY DELS WITH SECRETARIAT OVER ESSENTIALLY
INTERIM PRODUCT HEDGING ALL POSITIONS. AS AN ALTER-
NATIVE, U.S. MIGHT UNDERTAKE COMMITMENT TO PRODUCE
DRAFT DOCUMENT FOR CONSIDERATION BY SG IN FALL, FOLLOWING
CONSULTATIONS WITH OTHER DELS. THIS APPROACH ALSO
WOULD ENTAIL SOME OBVIOUS PROBLEMS FOR U.S., BUT MAY BE
ONLY VEHICLE FOR MOVING SG WORK FORWARD AT THIS STAGE.
MTN DEL THEREFORE FAVORS THIS LATTER ALTERNATIVE, WHICH
DOES NOT PRECLUDE FURTHER PROPOSALS FROM OTHER DELS
BUT DOES NOT DEPEND ON THEM. (APPROPRIATE FRAMEWORK FOR
A U.S. DRAFT WOULD BE SOMETHING LIKE ANTI-DUMPING CODE,
SUITABLY EXPANDED ON QUESTIONS OF SURVEILLANCE/DISPUTE
SETTLEMENT.) SHOULD U.S. COMMIT ITSELF TO DRAFT SAFE-
GUARDS DOCUMENT OVER SUMMER MONTHS, GROUND WILL HAVE TO BE
SUITABLY PREPARED IN JUNE SG MEETING AND FOLLOWED BY
APPROPRIATE TREATMENT IN MID-SUMMER MTN BILATERALS WITH
KEY COUNTRIES.CULBERT

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